

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE TWENTIETH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

and

HON'BLE SRI JUSTICE M.NARAYANA REDDY

WRIT APPEAL NO : 35 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated
15/12/2004 in WP NO : 23210 OF 2004 on the file of the High Court.)

Between:

K.Narasimhulu s/o Chinna Narsimulu
Mohemedabad, Amedgur Mandal, Ananthapur District.

..... APPELLANT

AND

- 1 P.Reddappa S/oVenkata Ramudu
Mahamadabad, Amaduguru Mandal.
- 2 The Revenue Divisional Officer, Penukonda,Ananatapur
District.
- 3 The Mandal Revenue Officer, Amadugur Mandal,

Ananathapur District.

.....RESPONDENTS

Counsel for the Appellant : MR.K.SRINIVAS

Counsel for the Respondent No.1: MR. O. MANOHAR REDDY.

Counsel for the respondent Nos. 2 & 3: G.P. FOR CIVIL SUPPLIES.

The Court made the following :

ORAL JUDGMENT:

(per Hon'ble The Chief Justice)

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1. On 28.10.2004 a show cause notice – cum – suspension order was served upon respondent No.1 herein on the ground that essential commodities were not supplied by him to certain cardholders for the last two years and the authorization was not shown to the authorities during inspection. The show cause notice pointed out that there was prima facie evidence against respondent No.1 for taking disciplinary action, irregularities committed were grave in nature and warranting suspension of the dealership pending enquiry, having contravened Clause 17(b) of A.P. State Public Distribution System Control Order, 2001. Therefore, in exercise of the powers conferred under G.O.Ms.No.19, F & A (SCII) Department, dated 08.01.1990, Revenue Divisional Officer, Penukonda, suspended shop dealership held by respondent No.1 of Fair Price Shop of Mohammadabad village calling upon

respondent No.1 to submit written explanation within seven days that why dealership be not cancelled. This order admittedly is an appealable order before the Joint Collector. Instead of preferring an appeal, 1st respondent approached the Court by filing writ petition under Article 226 of the Constitution of India. Learned single Judge, by the order impugned in this appeal, held that if the writ petitioner feels aggrieved by such an order, he has to prefer an appeal before the Joint Collector and when an effective remedy is provided for under the A.P. State Public Distribution System Control Order, 2001, this Court is not inclined to adjudicate upon the validity or otherwise of the order of suspension since it was open for the petitioner to avail the remedy of appeal. Thus, while relegating respondent No.1 – writ petitioner to the remedy of preferring an appeal, for which two weeks time was allowed, strangely enough the learned single Judge permitted the writ petitioner to continue as Fair Price Shop Dealer pending appeal. This order is now under challenge by the appellant with leave of the Court.

2. Grant of leave was opposed by the learned counsel for 1st respondent on the ground that appellant has no locus standi. Appellant is one of the cardholders of Mohammadabad village. Learned counsel for 1st respondent submits that appellant has no locus standi to challenge the order passed by the learned single Judge since none of his rights are affected and leave ought not to have granted. We have duly considered the submission and find no force therein. The very order of suspension and issuance of show cause suggest that it was a serious allegation made against the writ petitioner that he had not supplied essential commodities to cardholders for the last two years and had failed to show to the authorities concerned the authorization and since the cardholder, who is not supplied essential commodities, is a person directly concerned with continuance of the writ petitioner as Fair Price Shop Dealer. There is no reason why such a cardholder could be said to be a person to have no locus standi. He has definitely has locus standi to prefer the appeal. Needless to add that this cardholder has also filed a caveat in the writ petition. Therefore, we allowed the application seeking leave.

3. We have heard learned counsel for the parties.

4 .When an order of suspension is challenged, the same, during the pendency of the appeal or writ petition, cannot be further put under suspension. There cannot be any suspension of an order of suspension unless such order is without jurisdiction. In this case there is nothing shown that order is without jurisdiction. Learned single Judge declined to hear the writ petition. In other words learned single Judge declined to exercise jurisdiction in the matter in view of the alternative, adequate and efficacious statutory remedy available to the writ petitioner. In such circumstances, it was not permissible for the learned single Judge to have put the order of suspension in abeyance during the pendency of the appeal. Even otherwise, by passing such an order, learned single Judge almost allowed the writ petition thereby putting the order of suspension in abeyance. According to the learned single Judge order of suspension is appealable and it is the Appellate Authority who has to exercise the jurisdiction and who has to go into the legality and validity of the order. Learned single Judge specifically stated that he was not going into the legality and validity of the suspension. However, simultaneously, directed that during the pendency of the appeal the order shall remain suspended and writ petitioner shall be entitled to continue as Fair Price Shop Dealer. This order learned single Judge appears to have passed after observing that the Court, prima facie, is of the view that there is no allegation against the writ petitioner that he diverted the essential commodities and no cardholder would remain silent, if the supplies are not made for months or years together. As a matter of fact, the show cause notice recorded first charge that as many as 8 cardholders have not been supplied essential commodities for two years and the writ petitioner had misused the essential commodities by diverting to black-market. The second charge is that for two cardholders essential commodities are not supplied for six months. This show cause notice was issued on the basis of the report of the Mandal Revenue Officer who submitted his report and on the basis of which the charges were framed.

5. The practice of suspending the order of suspension must be deprecated more especially when the Court has not entertained the writ petition and relegated the party to remedy of appeal. In that view of the matter, appeal is allowed, impugned order is set aside and writ petition is dismissed. No costs.

DEVINDER GUPTA. C.J.,

M. NARAYANA REDDY. J.,

Dated: 20.01.2005.

VRK.

To

1 The Revenue Divisional Officer, Penukonda, Ananatapur District.

- 2 The Mandal Revenue Officer, Amadugur Mandal,
Ananatapur District.
3. Two CCs to G.P. for Civil Supplies, High Court Buildings, Hyderabad
(OUT).
4. Two CD copies.

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE M. NARAYANA REDDY.

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W.A.NO. 35 OF 2005.

**(Judgment of the Bench delivered by
Hon'ble The Chief Justice)**

Dt: 20.01.2005.

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